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Review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto: Protocol against the Smuggling of Migrants by Land, Sea and Air

Activities of the United Nations Office on Drugs and Crime to promote and support the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

Report of the Secretariat

I. Introduction

1. The present report was prepared in accordance with resolution 6/3 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, entitled "Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime", in which the Conference, inter alia, reaffirmed the importance of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, as the primary legal instrument to combat the smuggling of migrants and related conduct.

2. In the same resolution, the Conference requested the United Nations Office on Drugs and Crime (UNODC) to continue its technical assistance and capacity-building efforts, in coordination and cooperation with bilateral assistance providers and other relevant international organizations that assist States parties, upon request, in implementing the Smuggling of Migrants Protocol, and to assist States, upon request, in ratifying or acceding to the Smuggling of Migrants Protocol.

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3. Also in resolution 6/3, the Conference decided that the Working Group on the Smuggling of Migrants should continue to perform the functions set forth in Conference resolution 5/3 and that the Working Group should hold at least one intersessional meeting prior to the seventh session of the Conference, and noted in that regard the recommendation of the Working Group that the next meeting should focus on good practices in special investigative techniques and the establishment of multi-agency centres.

4. Furthermore, in resolution 6/3, the Conference requested the Secretariat to continue to assist the Working Group in the performance of its functions, and to submit a report to the Conference at its seventh session on the implementation of the resolution.

II. Implementation of Conference resolution 6/3

5. The Smuggling of Migrants Protocol has a total of 138 parties to date, with Cuba, the Czech Republic and Dominica becoming States parties in 2013.

A. Working Group on the Smuggling of Migrants

6. The second intersessional meeting of the Working Group on the Smuggling of Migrants was held in Vienna from 11 to 13 November 2013 and discussed (a) good practices in special investigation techniques, (b) good practices in the establishment of multi-agency centres and (c) good practices in informal cross-border cooperation and information-sharing.

7. The Working Group adopted recommendations specific to those topics, as well as general recommendations, including on the human rights of smuggled migrants, the provision of technical assistance, the full implementation of the Smuggling of Migrants Protocol, and bilateral and international cooperation.

8. The Working Group also recommended, inter alia, that the Conference, at its seventh session, should consider initiating discussions regarding the possibility that the Working Group develop and follow a workplan for its future meetings.

9. Furthermore, the Working Group proposed areas for future work, including the smuggling of vulnerable migrants such as children, including unaccompanied children; practical measures to prevent the smuggling of migrants, such as visa on arrival, public information campaigns and training sessions on fraudulent documents; organized crime aspects of the smuggling of migrants, including financial investigations and responses targeting the proceeds of crime; smuggling of migrants by sea; and criminal justice responses, including investigation and prosecution of perpetrators of migrant-smuggling operations.

B. Activities of the United Nations Office on Drugs and Crime to support the implementation of the Smuggling of Migrants Protocol

10. Since October 2012, UNODC has provided technical assistance on trafficking in persons and smuggling of migrants to over 80 States in all regions of the world,

upon their request, and with due consideration of the gender dimension of those crimes. On 6 February 2014, UNODC informally briefed Member States in Vienna and provided an update on the global programmes against trafficking in persons and the smuggling of migrants.

1. Strengthening the legal framework

11. UNODC provided legal advice and assistance to legislative drafters, as well as judicial officials such as judges and prosecutors, through the analysis of gaps in legislation and by conducting legislative drafting workshops. UNODC conducted legislative assistance in Africa, Asia and Latin America.

12. The Model Law against the Smuggling of Migrants, published in October 2010, continued to be a useful tool in the legislative assistance provided by UNODC during the reporting period. The Model Law provides a comprehensive set of provisions to assist States in adopting adequate legislation to implement the Protocol and is sufficiently flexible to satisfy the specific needs of a diverse range of legal systems.

13. UNODC has carried out assessments of legislation on and criminal justice responses to the smuggling of migrants in Benin, Cabo Verde, Cambodia, Colombia, Liberia, Pakistan, Sierra Leone and the United Republic of Tanzania. The Office also organized a national legislative drafting workshop in the Philippines, for the drafting of a bill on the smuggling of migrants.

14. In June 2014, a joint validation workshop was organized in the United Republic of Tanzania, which addressed both draft legislation on the smuggling of migrants and the Organized Crime Convention.

15. In July 2013, as part of the country programme in Pakistan, UNODC organized a meeting of legislators to discuss proposed legislation on trafficking in persons and the smuggling of migrants, based on the UNODC Model Law.

16. In August 2013, UNODC organized a legislative drafting workshop in Colombia, based on the recommendations contained in a prior national legal assessment report and on the results of a series of round-table discussions.

17. In November 2013, in close cooperation with the Ministry of Justice of Cambodia, UNODC organized a workshop in Phnom Penh that brought together relevant national counterparts to discuss the drafting of new legislation on the smuggling of migrants.

2. Data collection and research

18. An effective response to the smuggling of migrants requires sound knowledge of the existing situation, including reliable data, as a basis for policy- and decision-making. UNODC directly supports States in developing their capacity to collect and analyse information and data relating to the smuggling of migrants.

19. In its resolution 6/3, the Conference, inter alia, encouraged States parties to use existing operational databases to exchange information, including information on persons convicted of or suspected of committing any of the crimes set forth in article 6 of the Smuggling of Migrants Protocol and information on lost or stolen documents, in accordance with domestic law.

20. As one of its primary activities in this area, UNODC supported the regional ministerial Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process). In close cooperation with law enforcement authorities from Asia, the Pacific, Europe and North America, as well as with representatives from international law enforcement organizations, UNODC developed the Voluntary Reporting System on Migrant Smuggling and Related Conduct through a series of consultations that took place from 2010 to 2013. A pilot phase was conducted in October 2012, and the system was launched on 16 July 2013.

21. The Voluntary Reporting System is an Internet-based information technology solution that facilitates the collection, sharing and use of data on migrant smuggling and related conduct, including irregular migration, for analytical purposes. The system is intended to be user-friendly in collating contextual information for the interpretation of data, with flexibility to handle different national data collection systems. The reporting mechanism is complemented by a training programme on the operational and strategic analysis of migrant smuggling.

22. To date, authorities from 19 States and territories have confirmed their participation in the mechanism. On the basis of the principle of mutual information-sharing, only States that provide data may have access to the information provided by other States.

23. In September 2013, UNODC organized the first stakeholder workshop for focal points of the Voluntary Reporting System, at which participants were familiarized with the database and received technical training for data entry. Furthermore, the terms of engagement and governance structure of the system were discussed and clarified.

24. UNODC also continued to develop, produce and disseminate tools and materials such as manuals and research reports. In particular, UNODC sought to focus on cross-cutting issues, as well as specific challenges posed by certain forms of smuggling of migrants, such as the smuggling of migrants by sea. Moreover, tools have been adapted to meet country-specific needs and to train relevant actors in their effective utilization.

25. In April 2013, the *Assessment Guide to the Criminal Justice Response to the Smuggling of Migrants* was published. The *Assessment Guide* provides an inventory of measures for assessing the legislative, investigative, prosecutorial, judicial and administrative responses to the smuggling of migrants to deter and combat that crime. The information and experience to be gained from such an assessment can be integrated into successful national, regional and international strategies. The *Assessment Guide* was developed in close consultation with relevant experts and is intended to be applicable in States with varying levels of infrastructure for combating the smuggling of migrants.

26. In March 2013, UNODC launched an issue paper entitled *Combating Transnational Organized Crime Committed at Sea*, which contains a chapter on trafficking in persons and the smuggling of migrants. The paper recognizes that the smuggling of migrants by sea is one of the most dangerous types of smuggling and discusses the problems and challenges in establishing legislation on the smuggling of migrants and human trafficking by sea. The paper is based on the work of an expert meeting that took place in Vienna on 12 and 13 November 2012.

27. In September 2013, UNODC published a report entitled "Migrant smuggling in Asia: comparative research on financial flows within Asia and Europe", which provides in-depth information on the financial transactions involved in migrant smuggling operations in those regions.

28. In November 2013, on the margins of the meeting of the Working Group on the Smuggling of Migrants, UNODC launched an issue paper entitled *Corruption and the Smuggling of Migrants*, with the aim of assisting policymakers and practitioners in preventing and addressing corruption related to migrant smuggling operations. The paper highlights the fact that all comprehensive strategies to address the problems of migrants must include an element to combat corruption and identifies the main challenges of those intertwined issues and good practices to prevent and combat them. The paper is at present being developed as a training module.

29. In January 2014, UNODC launched a publication in Pakistan on recent trends in human trafficking and migrant smuggling to and from Pakistan, which also describes the modus operandi used by traffickers and smugglers to circumvent border controls.

30. UNODC has also increased efforts to develop its e-learning programme and to deliver cost-effective computer-based training on topics related to combating migrant smuggling and human trafficking to law enforcement and criminal justice practitioners. For example, in Pakistan, three new e-learning training modules are currently under development, entitled "Introduction to the smuggling of migrants", "Investigative techniques to counter the smuggling of migrants" and "Identify, investigate and prosecute migrant smuggling". Efforts are also under way to develop a new learning management system to enhance the effectiveness of monitoring e-learning activities.

3. Enhancing the criminal justice system response

31. In accordance with resolution 6/3, UNODC continued to carry out a wide range of technical assistance activities aimed at strengthening the criminal justice response to the complex crime of smuggling of migrants. In particular, UNODC offered training for those involved in addressing the smuggling of migrants, including border personnel, immigration and law enforcement officers, prosecutors, judges and counsel.

32. UNODC provided technical assistance in the context of the Partnership against Transnational Crime through Regional Organized Law Enforcement (PATROL), which was established in 2010, for a period of four years, to strengthen cross-border cooperation in the Greater Mekong subregion. The partnership addresses the trafficking of illicit drugs, the illegal trade in protected wildlife and timber products and the smuggling of migrants. Those crimes pose serious transnational threats due to their impact on the population and because they fuel and fund conflicts, terrorism and other illicit activities.

33. In the context of PATROL, UNODC provided numerous training activities and workshops on the smuggling of migrants to border personnel and law enforcement officials from Cambodia, the Lao People's Democratic Republic, Myanmar, Thailand and Viet Nam.

34. In Bali, Indonesia, capacity-building activities aimed at combating the smuggling of migrants, including a training session for law enforcement officers in the strategic analysis of smuggling of migrants, were held in April 2013. Similarly, a 10-day training course for law enforcement and immigration officers took place in Langkawi, Malaysia, from 23 September to 4 October 2013.

35. In 2013 and 2014, UNODC conducted needs assessment missions in the southern border states of Mexico and in Central America to gather relevant data on migrant smuggling trends and the regional and institutional capacities to tackle that crime. In addition, UNODC organized several round tables with key stakeholders from Mexico and Central America with the aim of drafting a communications strategy to increase awareness of migrants on the dangers posed by organized crime groups.

36. In June 2013, in close cooperation with the Algerian Ministry of Foreign Affairs and the Ministry of Justice, UNODC organized a national training course for magistrates on trafficking in persons and the smuggling of migrants in the country. The training course sought to promote the Government's efforts in effectively prosecuting trafficking in persons and smuggling of migrants cases.

37. In August 2013, UNODC organized a national training course in Colombia for criminal justice practitioners, on investigation, prosecution and trial preparation techniques, related to trafficking in persons and smuggling of migrants cases. The training included mock trials and the development of a video documentary. Participants included public officials, police investigators, prosecutors, judges and defence counsel.

38. In July 2013, UNODC and the United Nations Population Fund organized a workshop in Kazakhstan on international standards to ensure the availability and quality of services to protect and support victims of human trafficking and smuggled migrants. The event brought together relevant actors from civil society organizations in Kazakhstan and national agencies dealing with victims of those crimes.

39. In November 2013, UNODC and the European Union Integrated Rule of Law Mission for Iraq (EUJUST LEX-Iraq) organized a consultation workshop on international cooperation in combating trafficking in persons and the smuggling of migrants for Iraqi law practitioners, including police, prosecutors, judges and government officials. The participants discussed mutual legal assistance, extradition, the transfer of criminal proceedings and sentenced persons, rogatory commissions and international requests for the confiscation of assets.

40. In addition, at public events and lectures, UNODC continued to highlight the issue of smuggling of migrants at public events and in lectures. For example, UNODC continued its practice of delivering a training session in the context of the European Security Cooperation Course of the North Atlantic Treaty Organization (NATO). During the reporting period, UNODC conducted two such training sessions, in October 2012 and February 2013, to raise awareness among military staff serving with NATO.

4. Fostering dialogue, information exchange and cooperation among Member States

41. Owing to its transnational nature, close cooperation between States is essential for effectively combating the smuggling of migrants. Accordingly, in addition to conducting technical assistance activities focused on building capacity at the national level, UNODC undertook activities aimed at fostering cooperation among States. In particular, UNODC organized and participated in relevant information exchanges and conferences on the smuggling of migrants, at both the regional and global levels.

42. On 30 and 31 October 2012, UNODC participated in the workshop of the International Criminal Police Organization (INTERPOL) on the smuggling of people from Africa and the Middle East to the Americas and highlighted the legal framework on international cooperation provided under the Smuggling of Migrants Protocol. UNODC also took part in the follow-up workshop on investigations and prosecutions of human smuggling in the Americas, held at the International Law Enforcement Academy in San Salvador from 11 to 13 March 2014.

43. From 22 to 25 July 2013, UNODC organized in Vienna an interregional cooperation multidisciplinary training workshop to respond to the smuggling of migrants, which brought together experts from Brazil, Canada, Ethiopia, Ghana, Kenya, Malaysia, Mexico, Panama, Peru, Sri Lanka and the United States of America. The meeting sought to promote informal and formal cooperation and information-sharing, such as establishing communication procedures and information and data exchange, as well as giving the participants an understanding of the key elements of international cooperation and providing them with the necessary tools for its operationalization. The specific challenges faced by transit countries, and the ways in which origin and destination countries could effectively assist transit countries through international cooperation were also discussed in depth.

5. Strengthening inter-agency coordination

44. In the reporting period, UNODC continued to engage in partnerships with international and regional organizations, including with the International Organization for Migration (IOM), the Office of the United Nations High Commissioner for Refugees, the International Federation of Red Cross and Red Crescent Societies, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and INTERPOL, and with regional agencies, such as the European Union, Eurojust, the European Police Office (Europol), the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and the Organization for Security and Cooperation in Europe (OSCE).

45. UNODC, IOM and OSCE jointly organized a seminar in Vienna on 30 October 2012 that sought to map irregular migration and related transnational organized crime affecting the Western Balkans. In July 2013, UNODC participated in a meeting with IOM and the Office of the United Nations High Commissioner for Refugees on the development of projects related to migration in the Balkans, with a view to developing a coordinated and comprehensive approach to refugee protection and international migration in the region.

46. On 11 and 12 June 2014, UNODC, IOM and OSCE co-organized a transregional workshop on enhancing cooperation in matters related to irregular migration and the smuggling of migrants through South-Eastern Europe, held in Athens under the auspices of the Greek presidency of the European Union and hosted by the Greek Government. The transregional workshop gathered senior criminal justice and migration practitioners including police, border guards, migration authorities and customs officers, prosecutors, judges and liaison officers of transit countries in the Western Balkans.

47. UNODC continued to participate actively in United Nations-led efforts to develop policy related to international migration at the global level. In February 2013 and February 2014, UNODC participated in the eleventh and twelfth coordination meetings on international migration organized by the Department of Economic and Social Affairs of the Secretariat in New York, which brought together participants representing Member States, United Nations agencies and civil society.

48. During the High-level Dialogue on International Migration and Development, held by the General Assembly on 3 and 4 October 2013, UNODC highlighted the need to adopt measures to ensure respect for and the protection of the human rights of all migrants and, in particular, vulnerable groups such as women and children. Furthermore, UNODC participated in a side event of OHCHR focusing on human rights in the context of international border control, which considered the treatment of all migrants, regardless of their legal status and including migrants in an irregular situation, before they have gained formal entry to another country, during transit at borders or at the point of screening.

49. In November 2013, UNODC contributed to an expert consultation on human rights at international borders organized by OHCHR that explored the gaps between policy and practice. The workshop provided input for the development of OHCHR guidelines on human rights at international borders. Through its participation, UNODC sought to ensure that the guidelines would be compatible with the requirements of the Organized Crime Convention and, in particular, the Smuggling of Migrants Protocol.

50. At its twenty-third session, the Commission on Crime Prevention and Criminal Justice recommended for adoption by the Economic and Social Council a resolution entitled "Strengthening international cooperation in addressing the smuggling of migrants". The draft resolution underlines the need to address challenges related to the smuggling of migrants through a comprehensive and balanced approach and through bilateral, regional and international cooperation and dialogue, as appropriate, between countries of origin, transit and destination.

51. UNODC is also an active member of the Global Migration Group, an inter-agency group that brings together heads of agencies to promote the wider application of all relevant instruments relating to migration and encourage the adoption of more coherent, comprehensive and better coordinated approaches.

52. During its chairmanship of the Global Migration Group in the second half of 2012, UNODC strengthened the cooperation capacity of the Group by, inter alia, conducting a successful internal review of the Group since its establishment and by strengthening links between the Group and the Global Forum on Migration and Development. The UNODC chairmanship also resulted in a thematic paper by the

Global Migration Group on the topic of "Exploitation and abuse of international migrants, particularly those in an irregular situation: a human rights approach".

53. In November 2012, UNODC participated in the sixth meeting of the Global Forum on Migration and Development, held in Mauritius, at which the Executive Director of UNODC delivered a joint statement on behalf of the Global Migration Group, addressing progress in the Group's work and its forthcoming joint thematic statements on combating violence against migrants, migrant workers and their families.

54. Since the end of its chairmanship, UNODC has remained active and committed to the Group by contributing to joint Group statements, papers and events on migration-related issues, including the United Nations post-2015 development agenda.

III. Conclusions

55. The Working Group on the Smuggling of Migrants has continued to promote best practices in the fight against smuggling of migrants, in order to strengthen the capacity of Member States to respond to this crime. In particular, the Working Group discussed and exchanged information on good practices related to special investigation techniques, the establishment of multi-agency centres and informal cross-border cooperation and information-sharing.

56. Furthermore, UNODC has continued to deliver specialized and tailor-made technical assistance to Member States. Important developments in the reporting period include the launch, in the context of the Bali Process, of the Voluntary Reporting System on Migrant Smuggling and Related Conduct, a unique information-sharing tool, as well as the publication of the *Assessment Guide to the Criminal Justice Response to the Smuggling of Migrants* and the issue paper entitled *Corruption and the Smuggling of Migrants*.

57. Migrant smuggling is a complex and multifaceted crime affecting almost all countries. Nonetheless, relevant legislation on the smuggling of migrants remains insufficient, and only a limited number of States have specific policies and mechanisms in place.

58. In order to effectively address the smuggling of migrants, it is therefore essential to further strengthen the relevant normative framework, as well as the criminal justice response at the national level, while at the same time increasing international cooperation between countries of origin, transit and destination.